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November 30, 1995

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Via Courier

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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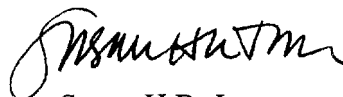
**Re: Petition for Reconsideration on Third Order on Reconsideration in PR
Docket 89-553**

Dear Mr. Caton:

Enclosed herewith, on behalf of Pittencrieff Communications, Inc., is an original and four (4) copies of a Petition for Reconsideration of the Commission's Third Order on Reconsideration in PR Docket 89-553.

If any questions should arise related to this matter, kindly contact the undersigned counsel at the direct line noted above.

Sincerely,



Susan H.R. Jones

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of Parts 2 and 90 of the)	PR Docket No. 89-553
Commission's Rules to Provide for)	
the Use of 200 Channels Outside)	
the Designated Filing Areas in the)	
896-901 MHz and 935-940 MHz)	
Bands Allotted to the Specialized)	
Mobile Radio Pool)	
)	
Implementation of Sections 3(n))	GN Docket No. 93-252
and 332 of the Communications Act)	

To: The Commission

PETITION FOR RECONSIDERATION OF
PITTENCRIEFF COMMUNICATIONS, INC.

Pittencrieff Communications, Inc. ("PCI" or the "Company"), by its attorneys, pursuant to the provisions of Section 1.106 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby petitions for reconsideration of the Third Order on Reconsideration ("Third Order") adopted in the above referenced proceeding on October 20, 1995.¹ The Third Order unnecessarily forbids 900 MHz specialized mobile radio ("SMR") Major Trading Area ("MTA") licensees from meeting their coverage requirements through the use of resale arrangements.

¹ The Third Order was published in the Federal Register on November 1, 1995. 60 Fed. Reg. 55484 (1995)

I. INTRODUCTION

PCI is a leading provider of SMR services in the United States with approximately 74,000 subscriber units in service. The Company serves SMR subscribers on approximately 3,200 800 MHz SMR channels providing coverage in Texas, New Mexico, Oklahoma, Arizona, Colorado, North Dakota and South Dakota. PCI has entered into a transaction with Advanced MobileComm, Inc. and related entities (collectively, “AMI”) under which PCI will, either through transfer of control or assignment, operate various SMR systems formerly licensed to AMI. After the transaction with AMI is complete, PCI expects to have approximately 93,000 subscriber units serviced on over 4,300 granted SMR channels in a footprint containing approximately 29 million people.

PCI did not participate in an earlier phase of this proceeding. However, PCI has registered to bid in the upcoming auction for 900 MHz SMR spectrum. In addition, through its transaction with AMI, PCI will assume control of AMI of San Diego, a licensee of 900 MHz SMR spectrum in the San Diego market. The rules governing the coverage requirements for 900 MHz MTA SMR licensees are, therefore, critical to PCI, both as a potential MTA licensee as well as a putative holder of a license covering an existing Designated Filing Area (“DFA”). Because the rules adopted in the Third Order restrict an MTA licensee’s ability to meet its coverage requirements through arrangements with incumbent co-channel licensees, PCI is an entity aggrieved by the Commission’s action, as defined in Section 1.106 of the regulations. Accordingly, is pleased to have this opportunity to submit the following petition for reconsideration.

II. DISCUSSION

The Third Order attempts to clarify the coverage requirements for 900 MHz MTA licensees. It notes that in the Seventh Report and Order in this proceeding² the Commission stated that 900 MHz MTA licensees must provide coverage to one third of the population of their service area within three years of initial license grant and to two thirds of the population within five years, or at the five year mark, submit a showing of substantial service.³

Further, in the Seventh Report and Order, the Commission stated that bidders could investigate the possibility of resale to meet the coverage requirements.⁴ However, the Third Order clarifies that MTA licensees cannot meet their coverage requirements by obtaining resale from another facilities based provider. The Third Order specifically states that coverage requirements cannot be met through resale of the facilities of an incumbent 900 MHz licensee.⁵

The Third Order attempts to clarify the 900 MHz MTA license coverage requirements to make those requirements consistent with broadband personal communications services ("PCS").⁶ However, the attempt at consistency is based upon

² Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Order on Reconsideration and Seventh Report and Order, FCC 95-395, PR Docket No. 89-553, released September 14, 1995, 60 Fed. Reg. 48913 (September 21, 1995) ("Seventh Report and Order").

³ Seventh Report and Order at ¶ 31. PCI notes that this requirement has been further clarified by a Second Erratum to the Seventh Report and Order released on November 8, 1995, DA 95-2327 ("Second Erratum"). While PCI believes that the Second Erratum was a correct interpretation of the Seventh Report and Order, the issue of resale to meet the MTA coverage requirements was left unchanged by the Second Erratum.

⁴ Seventh Report and Order at ¶ 32.

⁵ Third Order at ¶ 3.

⁶ Third Order at ¶ 4.

erroneous findings of fact and conclusions of law. The Commission points out that in PCS, licensees could meet their coverage requirements through the use of entities that would resell the licensee's spectrum on the licensee's behalf.⁷ It is natural to extend this logic to 900 MHz SMR. 900 MHz SMR MTA licensees should be able to meet coverage requirements through any use of their own spectrum, whether it be by resale, management, or other FCC accepted practices.

However, the Seventh Report and Order, in discussing resale, was not addressing the use of a licensee's own spectrum. Instead, the portion of the Seventh Report and Order addressing licensees' ability to meet coverage requirements discussed licensees using spectrum other than their own. The reference to affiliation and buyouts of incumbents, as well as the remaining discussion in the paragraph of the Seventh Report and Order that addresses resale makes it plain that the Commission meant to address licensees' ability to meet coverage requirements in cases where a licensee itself did not have the spectrum to do so.

Moreover, the purported clarification of the coverage requirements in the Third Report in order to produce consistency with PCS rules is not appropriate. In PCS, no co-channel incumbent PCS licensees block a winning bidder's ability to meet the specified coverage requirements.⁸ In the 900 MHz SMR service, however, the only way many auction winners can meet the coverage requirement will be through

⁷ Amendment of the Commission's Rules to Establish New Personal Communications Services, Memorandum Opinion and Order, 9 FCC Rcd 4957 (1994) at ¶ 157.

⁸ PCI recognizes that incumbent microwave users may block such an ability. However, the FCC has provided PCS licensees with the ability to relocate incumbent microwave users. No such ability applies in the 900 MHz SMR service.

arrangements with incumbent co-channel licensees. If an auction winner is able to secure an agreement with the co-channel incumbent licensee, there is no public policy reason for the Commission not to recognize the resale of the co-channel incumbent's capacity as part of the auction winner's system.⁹

PCI recognizes that the Commission would wish to prevent auction winners from meeting their coverage requirements by reselling spectrum of other facilities based MTA licensees. If it permitted this option, auction winners would theoretically not be required to construct their systems at all. In other services, this could lead to the construction of only one system, with all other facilities based carriers reselling the capacity of the first constructed system. However, in the 900 MHz SMR service, no such concerns should exist if the Commission permitted auction winners to include the resale of spectrum of the co-channel incumbent licensee in an auction winner's coverage. In that case, the auction winner will not be using the spectrum of a competitive facilities based MTA carrier. Instead, it will be using spectrum on which the auction winner bid and on which it will be providing services throughout other areas of the MTA.

The use of resale of an incumbent co-channel licensee's capacity is particularly important in instances where there are currently two DFA licensees in an MTA. In that

⁹ There is no current requirement for 900 MHz licensees to resell capacity. Accordingly, only in instances where the incumbent licensee and the auction winner are able to agree on mutually satisfactory terms and conditions, will the auction winner be able to rely upon the coverage area of the incumbent licensee to meet its coverage requirement. PCI is cognizant that in the Docket No. 94-54 proceeding, the FCC is contemplating mandatory resale requirements for all commercial mobile radio service ("CMRS") licensees. In order to preserve the voluntary nature of resale for 900 MHz incumbents to auction winners, the Commission could exempt 900 MHz incumbent licensees from resale requirements to other facilities based carriers during the carriers' construction period.

case, it will be difficult for one incumbent licensee that becomes the MTA auction winner to meet the coverage requirements without reselling the spectrum in the geographic area covered by the other DFA licensee. Those MTAs in which there are potentially two DFA licensees are:

MTA-01 New York; DFAs: New York City, Hartford
MTA-02 Los Angeles; DFAs: Los Angeles, San Diego
MTA-06 Charlotte; DFAs: Charlotte, Greensboro
MTA-13 Tampa; DFAs: Tampa, Orlando
MTA-23 Richmond; DFAs: Richmond, Norfolk
MTA-35 Buffalo; DFAs: Buffalo, Rochester

It is particularly important for MTA licensees to be able to include the resale of an incumbent licensee's capacity in meeting coverage requirement in light of the very unclear standard by which the Commission will judge licensees' demonstrations of "substantial service." The Commission's pronouncements on this subject have been, at a minimum, confusing. In the Seventh Report and Order the Commission stated that it would not consider a licensee to have met its coverage requirement if the licensee elected to, and provided coverage to, unserved areas.¹⁰ Yet in the Third Order, the Commission stated that "with the 'substantial service' mechanism, we have provided sufficient flexibility for new entrants to provide new service or to serve now unserved populations in all of the licenses"[emphasis added]¹¹ Similarly, in the Second Erratum, the Commission made clear that licensees may demonstrate that substantial service plan at the end of three years from license grant, in lieu of actually providing service to

¹⁰ Seventh Report and Order at ¶ 32: "That principle is at odds with the Commission's policy for the 900 MHz service of providing the system user with ubiquitous regional coverage."

¹¹ Third Order at ¶ 3.

one third of the population within that three year period.¹² Because of the uncertainty surrounding how licensees can demonstrate substantial service, and when that demonstration will be appropriate, it is important that the Commission permit auction winners to meet the coverage requirements through resale of the capacity of incumbent co-channel licensee.

III. CONCLUSIONS

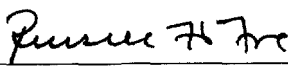
The element of the Third Order which limits the ability of 900 MHz SMR auction winners to include resale arrangements in their demonstration of meeting coverage requirements is contrary to public policy. Because no rules were modified as a result of the Third Order, the FCC should issue a decision which states that 900 MHz SMR auction winners, may, in order to that they have met the coverage requirements of Section 90.665 of the regulations, demonstrate that they have entered into a resale arrangement with the co-channel incumbent licensee, under which the auction winner will be able to provide service to its customers in the area covered by the incumbent licensee.

¹² The Second Erratum has been challenged through the submission of an Application for Review by RAM Mobile Data USA Limited Partnership. PCI supports the interpretation of the Second Erratum. It believes that logic dictates that the substantial service test be applied at both the three year and five year coverage benchmarks. Different tests should not apply at different benchmark periods. In PCS, for example, where a substantial service test is available, it is available at the single coverage requirement for 10 MHz licensees. There, the Commission does not impose both a coverage and substantial service test. See 47 C.F.R. 24.203(b). Nevertheless, the impact of the clarification in that Second Erratum would be minimized if the Commission adopts the rule changes recommended herein. The changes proposed by PCI would also be consistent with the approach of the Second Erratum, which is to allow auction winners alternative means to meet the coverage requirements.

WHEREFORE, THE PREMISES CONSIDERED, Pittencrieff Communications, Inc., hereby submits the foregoing Petition for Reconsideration and asks that the Commission act in a manner consistent with the requests stated herein.

Respectfully submitted

PITTENCRIEFF COMMUNICATIONS, INC.

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Dated: November 30, 1995